
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. 493-DB of 1999

Date of decision : 1.5.2008

Rattan and another

.....Appellants

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE S. D. ANAND**

Present: Mr. Baldev Singh, Senior Advocate with
Mr. Arshwinder Singh, Advocate for the appellants.

Mr. Naveen Malik, Additional Advocate General, Haryana.

S. D. ANAND, J.

Rattan and Kuldeep sons of Narain Singh, were prosecuted by the police of Police Station, Rai, District Sonepat, on a charge of having committed the murder of Samunder Singh.

Learned Trial Judge convicted both the appellants under Section 302/34 IPC.

The prosecution plea was that Samunder Singh (who was running a hotel under the name and style of Mohit Bhojnalya, near Haryana Glass Industries, in the area of village Sevli) was a professional rival to appellant Rattan, who had earlier been running a hotel over there under the name and style of "Hotel of Rattan". The premises of both those hotels faced each other. On the opening of the hotel by Samunder Singh, few customers who used to earlier take their food at the hotel of Rattan started patronising the former. On that account, the relations between them

became uneasy.

In July, 1995 appellant Rattan and his father Narain Singh caused injuries to Samunder Singh. The prosecution lodged by the police in that case ended in conviction. The appellant Rattan and his father were sentenced in that case on 6.5.1999.

On 5.3.1997 at about 11.00 P.M., PW-8 Mehar Singh and his cousin were having meals at the hotel of Samunder Singh, who was serving the meals cooked by himself to them. At that point of time, appellant Rattan came over there while he was carrying an axe. Appellant Kuldeep was empty handed. Both the appellants started abusing Samunder Singh. They announced that Samunder Singh had been able to survive in the first incident, that he had won over their customers and that they (appellants) would get his hotel closed and finish the grudge once for all. Thereafter, appellant Rattan gave an axe blow on the left side scalp of head of Samunder Singh who fell down. Rattan proceeded to give numerous blows to Samunder Singh when the latter was lying upon the ground. When PW-8 Mehar Singh and Rajinder Singh endeavoured intervention in order to save Samunder Singh, they were threatened by appellant Rattan with axe. They developed a sense of fear and ran away towards the village. In the meantime, PW-9 Rajinder Singh had arrived at the spot. He informed them later on that both the appellants had dragged the dead body of Samunder Singh to hotel of Rattan.

The prosecution, in order to prove the charge, examined PW-1 Sushil Kumar, PW-2 Constable Sansar Pal, PW-3 Constable Satbir Singh, PW-4 Inspector Kartar Singh, PW-5 Ram Kumar, PW-6 Dr. Arun Garg,

PW-7 Vikram Singh, Patwari, PW-8 Mehar Singh, PW-9 Rajinder Singh and PW-10 Sub Inspector Sajjan Kumar.

PW-1 Sushil Kumar, a photographer running his business under the name and style of Kumar Studio at Sonepat, had photographed the spot on 6.3.1997. He proved photographs Ex. P1 to Ex. P10 and also their negatives Ex. P11 to Ex. P20.

PW-2 Constable Sansar Pal had delivered the special report Ex. PA to the learned Illaqa Magistrate on the night intervening 5/6.3.1997 at 2.00 A.M.

PW-3 Constable Satbir Singh had got the post-mortem examination conducted on the dead body of Samunder Singh on 6.3.1997. After post-mortem examination had been conducted, Doctor handed over a sealed parcel, along with copy of post-mortem report to him, and he passed on the same to SI Sajjan Kumar (PW-10)..

PW-4 Inspector Kartar Singh had partly investigated this case inasmuch as he had, on the basis of secret information, captured both the appellants on 12.3.1997 and had thereby foiled the escape attempt by them. Besides it, he had also recorded the statements (under Section 161 Cr.P.C.) of MHC Dhanpat Singh, Constable Man Singh, Patwari Vikram Singh, Constable Sansar Pal and Sushil Kumar, Photographer.

PW-5 Ram Kumar attested the memo Ex. PE, vide which a parcel containing blood stained earth lifted from the spot was taken into possession. He also attested another memo vide which a parcel containing one axe and two pairs of Chappal, was taken into possession from the hotel of appellant Rattan.

PW-6 Dr. Arun Garg had conducted the post-mortem examination on the dead body of Samunder Singh and had found the following injuries:-

- “1. Two heavily cut incised wounds obliquely placed $\frac{1}{2}$ cm apart over the left side of the fore-head measuring 3 x 1 cm each extending upto the upper eye-lid and the inner angle of eye. The clotted blood was present in the wound. On dissection there was blood over the frontal bone along with fracture of the left frontal bone. On removing the scalp, there was blood in the left orbital vacuity and anterior cranial fossa with blood over the left cerebral haemisphere sub-dural region.
2. A heavily cut incised wound present on the face in the area of mouth on the left side cutting the lower lip deeply and measuring 9 x 2.5 cm and bruising the upper lip. There were multiple fractures of the left side facial bones, left mandible, and left lower third, fourth, fifth, and sixth were missing with a lot of blood in the subcutaneous tissues. The muscles were cut.
3. An incised wound 3.5 X 2 cms over the left side of neck extending on to the front with lot of blood in the wound. The external and internal jugular veins and carotid artery was cut along with the muscles of the neck.
4. An incised wound 4 X 0.5 cms over the left mandibular region with muscles cut and clotted blood present. There

was fracture of the left mandible.

5. A heavily cut incised wound over the right side of the neck extending on to the face in the mandibular region. The internal carotid artery and veins were cut along with muscles. The tongue had been cut from the base and was lying separate. The size of the wound was 10 X 4 cms.
6. A heavily cut incised wound over the right side of the neck adjoining and extending over the right occipital area. There was lot of blood over the scalp in this area. On dissection there was fracture of right occipital bone. The muscles and other tissues were heavily cut with clotted blood in them.
7. A reddish abrasion 9 X 1.5 cms over the right shoulder, tender with blood infiltrated in the subcutaneous tissues.
8. A bluish bruise 1 cms over the right upper eye-lid.

PW-6 Dr. Arun Garg further opined that the cause of death was shock and hemorrhage as a result of multiple injuries as described in PMR. The injuries were ante-mortem in nature caused by heavy sharp cutting weapon, (except injuries No. 7 and 8 which had been caused by blunt weapon). The injuries were sufficient to cause death in ordinary course of nature.

PW-8 Mehar Singh is real brother of deceased and also an eye witness of the impugned occurrence.

PW-9 is Rajinder Singh who had also witnessed the impugned occurrence.

PW-10 Sub Inspector Sajjan Kumar was the investigating Officer of the case.

FSL report Ex. PL and Ex. PL/1 were tendered into evidence.

Appellant Rattan pleaded innocence with the following averments:-

"I am innocent. Mehar Singh and Rajinder Pws are first cousin as their mothers are real sisters. We have filed a civil suit against Lakhmi, father of Rajinder PW and that was decreed in our favour. There was no hotel or dhaba of Samunder in the area of village Sevli. Complainant party wanted to get out dhaba and on that score we have been falsely implicated and thereafter our dhaba was closed. Samunder deceased was a vagabond having checkered history. He was convicted by Sessions Court, Rohtak for seven years u/s 307 IPC and for 5 years u/s 392 IPC. He was also convicted by Bhiwani Court and was convicted and sentenced for 5 years u/s 392 IPC. At the time of his death many criminal cases were pending against him in Delhi and Rai Police, Dadri Police Station and also Bahadurgarh Police Station and all those cases were either of dacoity or robbery or attempt to murder or under TADA. He was history sheeter and the Rai Police used to visit his premises and our father Narain Singh being Lambardar of small village Sevli used to accompany the police and on that

score Samunder and his family members did not like my father to accompany the police at their house and used to abuse my father and Samunder had also threatened that he used to bring the police at his house, Samunder had created many enemies and the police of different police stations was also against him. He might be done to death by some of his enemies and we have been falsely involved as they were nourishing grudge against us.”

Appellant Kuldeep adopted that very plea.

No evidence was adduced by the appellants in defence.

Insofar as the appellant Kuldeep is concerned, the only role attributed to him in the statement of PW-8 Mehar Singh is that he came empty handed to the hotel run by Samunder Singh deceased. He does not attribute any other role to Kuldeep, who was empty handed. Further, he claimed having been told by Rajinder Singh PW-9 that both the appellants had dragged the dead body of Samunder Singh to the hotel of appellant Rattan. PW-9 Rajinder Singh did not claim having furnished that information of PW-8 Mehar Singh. That statement, being derivative in character and it not having been owned by PW-9 Rajinder Singh, cannot be said to be substantive evidence.

Insofar as PW-9 Rajinder Singh is concerned, he also did not attribute any weapon to appellant Kuldeep. All that he stated was that Kuldeep had taken Samunder Singh into his grip while appellant Rattan inflicted the axe blow to him. No such role was attributed to appellant Kuldeep by PW-8 Mehar Singh. Even in the course of investigation, there

is no allegation that any recovery had been effected at the instance of appellant Kuldeep. In view, thus, of the proven hostility between the parties, in the present prosecution, the possibility of Kuldeep having been roped only because of his being real brother of appellant Rattan cannot be ruled out.

We, accordingly, give benefit of doubt to appellant Kuldeep. The appeal preferred by him shall stand allowed. He is acquitted of the charge.

The same is, however, not true of appellant Rattan. Both witnesses PW-8 Mehar Singh and PW-9 Rajinder Singh constituting the ocular segment were categorical in their statements that appellant Rattan was carrying an axe with which he gave blows to Samunder Singh. It is in the evidence that appellant Rattan gave innumerable blows to Samunder Singh while latter was lying upon the ground. The medical evidence is fully supportive of the ocular version. The medical evidence, in the statement of PW-6 Dr. Arun Garg, categorically indicated that deceased Samunder Singh had eight injuries on his person and the injuries found on his person included fracture of right occipital bone and it was also found that muscle and other tissues were heavily cut with clotted blood in them.

The present is, thus, a case in which the eye witness account is fully buttressed by the evidence of Medical Officer.

Learned counsel for the appellant has a grievance that deceased had been done to death by one of his enemies because he himself was facing prosecution in large number of cases.

The fact that deceased was facing number of cases cannot be

denied in the light of the facts proved on the file. At the same time, that fact itself cannot be used by the appellant Rattan to plead for exoneration. A person facing a prosecution may get the noose if prosecution plea again him is proved. It could be the other way about as well. We are just not concerned with the pendency of large number of cases against the deceased because in the circumstances of the case, the pendency of those cases does not appear to have any bearing on the adjudicatory exercise which we have undertaken in the context of murder of Samunder Singh at the hands of appellant Rattan.

Learned counsel for the appellant, then, argues that prosecution plea is incredible inasmuch as a ten year old child whom Samunder Singh had employed to clean utensils, had not been examined at the trial.

The plea is frivolous on the face of it. The parties seems to be having uneasy relationship. There is no evidence to the effect that above mentioned ten year old child was actually available at the spot at the time of impugned occurrence. In the absence of evidence to that effect, the plea advocated defies logical comprehension.

Learned counsel for the appellant, then, has criticism to direct at the non joining of PW-8 Mehar Singh and PW-9 Rajinder Singh by the police in the inquest proceeding. The plea raise is completely devoid of force. The Investigating Officer did notice the presence of Ajmer son of Ram Chander Jat and Ranbir son of Karam Singh Jat in the proceeding. The fact that the dead body of Samunder Singh was handed over to PW-8 Mehar Singh and PW-9 Rajinder Singh immediately thereafter is apparent from the receipt, which is available on the file. The mere fact that PW-8

Mehar Singh and PW-9 Rajinder Singh did not attest the inquest proceeding would not affect the credibility of the prosecution plea.

We find, on a perusal of the ocular testimony of PW-8 Mehar Singh and PW-9 Rajinder Singh that they presented the prosecution version in a fairly forthright manner and, in the course of the statement, detailed sequence of events in a categorical, clinching and unambiguous manner. Further, their testimony is fully supported by the medical evidence and the fact that human blood was found by the FSL on axe Ex. P1.

In the light of the afore-going discussion, we hold that appeal filed by Rattan deserves dismissal and it is so ordered accordingly. However, appeal filed by Kuldeep shall stand allowed. The finding of conviction against him shall stand set aside. He shall be released forthwith, unless required to be detained in any other case.

**(S. D. ANAND)
JUDGE**

May 01, 2008
Pka

**(ADARSH KUMAR GOEL)
JUDGE**